

The Distribution of the Geneva Award

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1897

A senior thesis project of the University of Kansas

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Thesis
1997
Distribution

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This article will fall naturally into three divisions. First, the legislative history of the establishment of the Court for the distribution of the award. Second, the work of the Court, and Third, the handling of the money by the Government.

I.

On the 14th day of September 1872, the tribunal, which met at Geneva Switzerland for the purpose of adjusting the claims of the United States known as the "Alabama Claims", awarded to the United States the sum of \$15,500,000 in gold as the indemnity to be paid by Great Britain for the satisfaction of all claims referred to the consideration of the tribunal.

In order to arrive at a clear understanding of the distribution of this money by the United States, and of the different views which were held with reference to the character of this fund, it will be necessary to notice briefly the various kinds of claims presented to the consideration of the tribunal and how they were disposed of by that body. These claims may be classified as follows:

1. The claims for direct losses, growing out of the destruction of vessels and their cargoes by the insurgent cruisers. 2. The national expenditures in pursuit of those cruisers. 3. The loss in the transfer of the American commercial marine to the British flag;

4. The enhanced payment of insurance
5. The prolongation of the war and the addition of a large sum to the cost of the war and the suppression of the Rebellion.

The arbitrators said with reference to claims for "losses in the transfer of American commercial marine to the British Flag; enhanced payment of insurance"; and the "prolongation of the war and the addition of a large sum to the cost of the war and the suppression of the Rebellion". "These claims do not constitute upon the principles of international law, good foundation for an award of compensation or computation of damages between nations---- and should be wholly ex-

cluded from the consideration of the tribunal (in making its award."¹)

After this decision had been made, Mr. J. C. Bancroft Davis, the agent of the United States before the tribunal, stated that the Government would not insist further upon these claims and ^{that} they might be excluded from all consideration in any award that might be made.²

The arbitrators decided further, that the expenditures for pursuit of the Confederate cruisers were not distinguishable from the general expense of the war, and that there was no ground for awarding an indemnity to the United States under that head.³

This left claims of but one kind upon which

1. For. Rel., Pt. 2, Vol. 4, pp. 19-21 3d Sess. 42d Cong. 2. Ibid. 3 Ibid. p. 58.

an award might be based; viz., claims for direct losses growing out of the destruction of vessels and their cargoes by the insurgent cruisers and these were subdivided into ^{three classes.} 1. Claims for the destruction of vessels and property of the United States. 2. Claims for the destruction of vessels and property under the flag of the United States. 3. Claims for damages for injuries to persons growing out of the destruction of each class of vessels!

Under the first two divisions above would be included, (a) ^{The claims of} Owners' claims for the values of goods destroyed; (b) ^{The claims of} Merchants' claims for the values of goods destroyed; (c) ^{The claims of} whalers' and fishermen's claims for the values of oil or fish destroyed;

(6)

- ^{The claims of}
(d) passengers, officers, and sailors' claims for the value of personal property destroyed;
(e) The claims of insurance companies for the values of property destroyed ^{on which the insurance money} for which they had ^{had already been paid.} paid the owners the insurance.

Under the third division would be included; ^{The claims of} (a) owners' claims for the loss of charter-parties, freights, etc. ^{The claims of} (b) merchants' claims for the loss of expected profits on goods; ^{The claims of} (c) whalers' and fishermen's claims for the prospective catch of oil or fish; ^{The} (d) passengers' claims for various injuries other than in the loss of baggage; ^{The claims of} (e) officers' and sailors' claims for wages and expenses ^{up to the time of} until their arrival home!

The tribunal decided that the United States

should not be awarded indemnity for, prospective earnings, double claims for the same losses nor for gross freights so far as they exceed net freights.¹

Of the several cruisers, on account of which the United States claimed damages, only the Alabama, Florida, and their tenders, and the Shenandoah after leaving Melbourne on the 18th day of February 1865, were considered as the cruisers for the depredations of which Great Britain was ^{held responsible.} ~~liable~~.

These vessels afterwards became known in the arguments concerning the distribution of the award as the "incriminated cruisers".
 While those vessels, for the acts of which the tribunal ^{for whose acts} ~~decided~~
 And the other vessels, which the tribunal decided

decided

Great Britain could not be held liable, were known as the "exculpated cruisers."

President Grant in his annual message to Congress, December 2, 1872, ^{Pres. Grant} ~~after~~ stating that the Geneva tribunal had completed its labors and had made an award of \$15,500,000. to the United States, ^{and then} recommended the creation of a board of commissioners for the purpose of making an examination of the ^{examining} several cases ^{for which} ~~where~~ indemnity was due¹.

In pursuance of ^{the President's} this recommendation in the President's message, bills ^{referring to} ~~were~~ introduced into each House early in the session. looking to the distribution of the money.

1. Messages and Papers of the Presidents Vol. 7: 185-

which by the terms of the treaty ^{of Washington} was not
 payable for one year after the award had
 been made. were introduced into each House very
 early in the session. These bills were referred to the judiciary
 committees ^{of both the Senate and the House of Reps.} in each house, and late in
 the session each one of these committees
 reported a bill providing for the distri-
 bution of the award. This was the be-
 ginning of a debate in Congress con-
 cerning the distribution of this money which
 lasted, with more or less intermission for near-
 ly fifteen years.

Each House

Each House passed its own bill. These
 differed radically from each other not
 only in the mode of distribution but as to who
 should be the beneficiaries.
 1 Senate and House Journals 3d Sess. 42d Cong.

The House bill provided for the following classes of claimants: 1. Corporations and citizens of the United States who owned property destroyed by the Confederate cruisers, for whose acts it ^{has been} ~~was~~ found ^{that} Britain was liable. 2. Officers and crews who were citizens, for their wages earned and for their property destroyed and indemnity for damages actually sustained by them and other persons on board, and ^{for} the amount expended by them in returning home or to their place of business. 3. Persons who had received insurance in less amount than the value of their property were to receive the difference. 4. The United States for all vessels owned or chartered and for the loss of which the Government

was liable. 5. Persons or corporations who had paid a premium on account of war risk after the sailing of the said cruisers to receive a sum equal to the amount of such extra war premiums. 6. All insurers who should ^{show} by their books that the war premiums received by them did not equal in amount the losses paid by them on account of the destruction of property by all cruisers bearing the Confederate flag.

The person claiming indemnity might ^{bring his action} bring his action in any circuit or territorial court having jurisdiction where he resided or in which the port ^{was} ~~is~~ situated from which the vessel last sailed before capture.

The Attorney General of the United States

was to defend the action, and appeals might be taken to the Supreme Court upon questions of law if the circuit judge thought it ought to be heard by that body or in case the judges sitting should be opposed in opinion!

The Senate bill provided for a special court of five persons to be known as the Court of Commissioners of the Alabama Claims, whose duty it was to receive and examine all claims directly resulting from damage caused by the cruisers, Alabama, Florida, and their tenders, and by the Shenandoah after her departure from Melbourne Feb. 18, 1865.

No claim ^{was} to be allowed when the party had received insurance except when insurance did not cover the value of the property, or amount to the damage sustained, in that ^{case} the person could recover the difference. No claim was to be allowed for unearned freight, prospective profits, or gross freights, or for wages for more than one year from the breaking up of the voyage. No claims by insurance companies were to be allowed unless they could show by their books that during the Rebellion the sum of their losses in war risks exceeded their premiums or other gains upon war risks, in that event they could recover the difference. No claim was to be allowed or admitted unless the person making it was entitled

to the protection of the United States at the time of loss, nor in favor of any one who did not bear true allegiance to the United States during the late Rebellion. Interest was to be allowed at four per cent from the date of the loss or damage sustained.

The Court was to hold its sittings at Washington and make its reports to the Secretary of State. A list of the judgments rendered would be transmitted by him to the Secretary of the Treasury, and ~~this~~ official would pay them. The expenses of the court were to be paid out of the award.¹

The two Houses being unable to agree upon any measure for the dis-

tribution of the money, passed an act late in the session, for its investment whenever it should be paid.

The money was to be used to redeem as far as it might the public debt, and an amount equal to the debt so redeemed was to be invested in the five percent registered bonds of the United States to be held subject to the future disposition of Congress.¹

President Grant in his message to Congress on December 1, 1873, after reciting the fact that Great Britain had paid the money allowed under the Geneva Award and that it had been invested in bonds under

¹ U.S. Stat. at Large Vol. 17 p 601.

the act of March 3, 1873 before referred to, renewed his recommendations, "that a commission be created for the purpose of auditing and determining the amounts of the several direct losses, growing out of the destruction of the vessels and their cargoes" by the Confederate cruisers, Alabama, Florida and their tenders, and the Shenandoah after leaving Melbourne, ^{for} which the sufferers have received no equivalent or compensation and of ascertaining the names of the persons entitled to receive the same, making the computation upon the basis indicated by the tribunal of arbitration at Geneva."

On April 24, 1874 Mr. Edmunds reported a bill for the distribution of the award, from the committee on judiciary of the Senate.

This bill was similar to the one which passed the Senate at its previous session. It passed the Senate May 12, 1874 having been amended so as to provide for the estimation of damages upon a gold basis and judgments secured under its provisions were to be paid in coin.¹

When this bill reached the House it was referred to the judiciary committee of that body and was reported back June 9 with an amendment in the nature of a substitute. This substitute differed from the bill passed by the House at the

¹ Cong. Rec. Vol. 2 Pt. 4 pp. 3801, 3811.

previous session, in that it provided for the payment of indemnity for all loss or destruction by any Confederate cruiser ~~for~~ whose acts the Government of the United States ^{has} have made demand upon the Government of Great Britain. The bill also provided for the indemnification of mutual insurance companies for any losses paid by them.

~~Also~~ ^Y The manner of distribution of the money ^{likewise} differed from that provided by the former House bill. The present bill provided for the bringing of a single suit by the Attorney General of the United States in some Federal Circuit Court to be designated by the President, in the nature of a bill of interpleader. All persons who had claims

filed in the Department of State were to be named as defendants. Notice was to be given of the pendency of the suit in a newspaper of each State and Territory, and any person desiring to become a party to the suit must do so within six months after the filing of the bill; although, for sufficient reasons shown, time might be extended 30 days. Claims of more than \$5000 might be taken on appeal to the Supreme Court of the United States, and if any claim for such an amount ^{were} allowed to either, the Government or any other claimant either might appeal.¹

This Substitute of the Committee was amended

¹ Cong. Rec. Vol. 2 Pt. 5 pp. 4734-5.

by the House, by striking out the part which allowed mutual insurance companies to share in the award and as amended was passed June 10.¹ The Senate refused to concur in the House bill and a conference committee was appointed which reported back the Senate bill with a few modifications. The coin basis for damages was abandoned, and the provision for turning the balance into the treasury was stricken out; and a clause inserted providing for the holding of the balance for the payment of other claims in the future. This bill was agreed to by both Houses and became a law June 23, 1874.²

A brief survey of the action of Congress

1. *Ibid.* p. 4846. 2. *Jour. H. R.*, 1st Sess. 43d Cong. pp. 1284-6.

up to this point having been ^{given,} a more detailed study of the bills presented by the two Houses, and a consideration of the questions involved in the distribution of this award will be of interest. ~~The first~~

The first bill which was passed by the House provided for the payment of losses caused by the "inculpat^d" cruisers; for war-premiums; and for payment to insurance companies who could show by their books that the war premiums received by them did not equal the losses paid by them on account of the acts of all the Confederate cruisers. The second bill as reported by the committee on judiciary provided for the payment of losses caused by both "incul-

pated" and "exculpated" cruisers; payment of war premiums; payment to mutual insurance companies; aid to other insurers in case losses paid exceeded war premiums received. The provision in regard to mutual insurance companies was stricken out by the House as before stated.

The Senate bills practically admitted only one class of claimants, viz. Persons who suffered damage by the acts of the so-called inculpated cruisers, the Alabama, Florida, and tenders, and the Shenandoah after her departure from Melbourne February 18, 1865. Insurance companies were to share only when the total of losses in respect to war risks exceeded the totals of premiums or other gains.

At both these ^{sessions} of Congress numerous petitions and memorials from insurance companies were received, protesting against their exclusion from the award and praying that they might be allowed to participate therein.⁴

The great questions before Congress were; To whom does this money belong? Is this a National fund or does the government hold it simply as a trustee for the persons who presented private claims to the tribunal at Geneva? If it is a National fund may the government do what it pleases with it, or is it bound legally or morally to distribute to those claimants upon whose claims the award was based?

Senate Jour. 3d Sess. 42d Cong. and 1st Sess. 43d Cong.

It will be noticed that the insurance companies were almost entirely excluded from sharing in the award, and hence the principal fight waged in congress was over the question whether they should be allowed to participate.

According to their ^{own} statement the insurance companies had filed claims to the amount of \$5,002,453 which were presented to the tribunal at Geneva, of which mutual companies had \$3,647,726 and stock companies \$1,354,727, ~~then~~

There were ~~forty~~ ^{that} three companies which had filed such claims. The question, moreover, whether mutual companies should have preference over stock companies and be allowed to share caused considerable discussion.
 1 Cong. Rec. Vol. 2 pt. 5 p. 4764.

The substance of the arguments upon these various questions, as it is found in the reports of committees, and in the congressional debates will be briefly given.

Mr. Edmunds, the chairman of the judiciary committee of the Senate, and who represented the views of the majority of that committee, in speaking upon the Senate bill, made use of the following arguments in favor of the "national fund" idea. He was a government at war with the confederate states; that is, the Confederacy was a belligerent. Great Britain by assisting the South in allowing the confederate cruisers to be built in her ports, became an ally of the Confederacy, and therefore became

responsible to the United States for those acts. Great Britain being virtually a belligerent the individual citizen could have no claim against her, but the government of the United States might have for the violations of neutrality. The treaty of Washington provided "that in order to remove and adjust all complaints and claims on the part of the United States", it was agreed to refer the claims known as the "Alabama claims" to this high tribunal. If the tribunal should determine in gross they were to allow a gross sum. If they should determine that there shall be a minute inquiry to ascertain exactly how much damage has been done, then there shall

be a board of assessors. The expenses of this board was to be borne equally by the two governments, and not as in the case of private claims, out of the fund. Why? Because citizens have no right to this fund recovered. Their rights begin upon the sentiments of justice or generosity, or public policy upon which their government itself may be called upon to act in reference to the special injuries its citizens have received. The twelfth article of the same treaty, in speaking of claims of individual citizens uses very specific language which cannot be misunderstood and entirely different from that used by the treaty

When speaking of public rights and public injury.
 1 Cong. Rec. Vol. 2 Pt. 4 pp. 3793-97

The majority report of the judiciary committee of the House presented by Mr. B. F. Butler chairman, when reporting the House substitute uses in addition these arguments: "The claims 'generically' known as the 'Alabama Claims' have been dealt with by the government from the first as national claims. The Johnson Clarendon Treaty, was rejected because it dealt with these claims as private claims.

The message of the President following the rejection of this treaty, recommended that Congress should provide by law for an assumption of all these individual claims by the Government so that they might be held by the United States to be used in future negotiations. Certain citizens claiming to be

injured by these cruisers undertook to make claim upon the Government of Great Britain for them and to negotiate for themselves the settlement of the same; the Secretary of State invoked the aid of municipal law, and gave notice to all persons that its provisions would be enforced against those offending.

That the United States presented claims to the tribunal in two classes; not National and private, but as direct and indirect losses and injuries. The government when it withdrew its indirect claims withdrew both National and private claims, e.g., for prolongation of the war, payment of enhanced premiums, so that the government took it upon itself as it had a right to do, to withdraw claims

for individual losses as well as claims for public losses, as its judgment dictated was its best policy. While it is true that the government presented the losses of private individuals to the tribunal as the basis of its claims, it presented them only as evidence of the amount of loss the nation had sustained through its citizens at the hands of Great Britain, and not as the claim of the individual for that loss. The instructions of Mr. Fish, Secretary of State, to the counsel at Geneva say; "The President desires to have the subject discussed as one between the two governments and he directs me to urge upon you strongly to secure if possible the award of a sum

in gross. In the discussion of this question--- you will be careful not to commit the Government as to the disposition of what may be awarded, or what may be recovered, in the event of the appointment of the board of assessors, mentioned in the tenth article of the treaty. ---- The Government wishes to hold itself free to decide as to the rights of and claims of insurers upon the termination of the case. If the value of the property captured or destroyed ^{be} recovered in the name of the government the distribution of the amount recovered will be made by this government without committal as to the mode of distribution"

For. Rel. Pt. 2 Vol. 2: 416, 3d. Sess. 43d Cong.

The Counsel said to the tribunal at Geneva:

"These claims are all preferred by the United States as a nation, against Great Britain as a nation, and are to be so computed and paid whether awarded as a sum in gross..... or awarded for assessment of amounts under the tenth article". *Ibid* 3:16 The committee therefore believe that this money belongs to the United States free from all legal ~~and~~ equitable claims of any person whatever; to be dealt with by the government according to its own views of the claims of its citizens upon itself and the moral duty to afford such relief as may seem just.

Mr. Thurman of Ohio made the principal speech in the Senate in opposition to the
 1 H.R. Rept. Com. 628 pp. 1-5 1st Sess. 40d Cong.

part of the bill which precluded the insurance companies from presenting their claims to the court which was to distribute the award.

In His speech, which incorporated the substance of all the speeches made against the measure, Mr. Thurman said: First "with reference to mutual insurance companies, they are men who pay premiums as between themselves, and whatever profit is derived from premiums goes to themselves. They make no money of the necessities of other people; they simply guarantee each other against loss. There is no good reason why ten merchants constituting a mutual insurance company should be compelled to present a balance sheet of all their gains and losses

while ten merchants who each insures himself, that is, takes no insurance at all, are not required to make any such exhibit.

Again under the ~~law~~ of subrogation which is a part of every contract of insurance and which subrogates the underwriter to the rights of the assured upon the abandonment of the property lost, and upon payment by the underwriter, these companies should be allowed to share. This right of subrogation was expressly admitted before the ^{Geneva} Tribunal by Sir Roundell Palmer, the counsel for England, and also by Chief Justice Cockburn, the English Arbitrator. It was insisted upon on our side and

admitted on the side of the British government,

Now passing to the proposition of the chairman of the judiciary Committee, That Great Britain was an accessory to the Confederacy and therefor a belligerent he says, "If Great Britain violated neutral obligations we had a right to treat her as a belligerent, or as simply violating neutral obligations and make demand upon her accordingly". In what character did we treat her? If we treated her as a belligerent then every contract made between British and American citizens during the four years of war was absolutely void; every American citizen who made a contract with a British citizen was liable to pun-

ishment under our statutory law. But nobody pretends any such thing as that. During the whole time of that war our minister was at the Court of St. James, the British minister in Washington and the ordinary diplomatic and business intercourse was kept up; and from the inception of these claims to the last day of judgment upon them our whole claim was, that Great Britain omitted to discharge the duties of a neutral."

"These claims were regarded from the beginning to the end as the claims of private citizens, and second as claims upon Great Britain as a neutral violating neutral obligations. Losers reported their

losses as they occurred to the state department and in every case they were received, filed and presented to Great Britain as individual. Claims of insurance companies were taken and presented in the same way. Every dollar awarded except about \$200,000, that the government of the United States had a right to was awarded in respect to these private claims; and of these private claims the insurance companies owned between \$4000000 and \$5000000. The money belongs to the government in trust only, to be applied to the purposes for which the arbitrators designed it, or it must be returned to the power that paid it. We cannot exclude this class

of claimants in whose name we present
 our demands and for whose use the
 money was paid. If insurance com-
 panies were to be excluded it should have
 been done when our citizens were
 called upon to present their claims to
 the State Department. We cannot exclude
 them without injustice to them and
 without dishonor to our government."

The minority of the House judiciary committee
 took strong ground in opposition to the measure
 reported by the committee. They said the
 United States presented a list of private
 injuries to the tribunal, with proof to sup-
 port them and recovered for them. They

presented National claims also, but these were disallowed. It was only after this disallowance that an award was made which equaled the mean valuation of the private claims with interest thereon.

Although the majority of the Committee say the money belongs to the United States, they, nevertheless, assume that the Government is liable to those of its citizens who suffered most from the depredations of the Confederate cruisers. But there can be no liability upon the part of the United States to its citizens for property destroyed by a belligerent enemy. On the other hand a neutral nation through whose neglect a belligerent has opportunity to

destroy is liable to the citizens of the other belligerent whose property was destroyed through its neglect. The citizen may petition the neutral government directly for redress or he may procure his own government to intercede for him.

When his own government does that she stands as to anything she may recover for her citizen's loss as his trustee.

If, when the Secretary of State submitted the claims of the owners and insurers of the bark *Alert* destroyed by the *Alabama* Great Britain had admitted what the tribunal of Geneva subsequently found, would it not have shocked the moral sense if the government had withheld

the money from the claimants or sought to divert it to other parties having no interest in the work? And if this be so as to the West it can make no difference that the government instead of claiming for a single ship, claimed for all, so long as the amount collected was paid for injuries to the ships and cargoes of private citizens, and every claim of the Government was disallowed.

Mr. Prentiss of the House Judiciary Committee in speaking of the bill presented by the majority ^{and} ~~speaking~~ with reference to war premiums said: "That these indirect claims - of which war premiums was one class - were not regarded by our government as

'H.R. Rept. Com. No. 628 pp. 14-26 1st. Sess. 43d Cong.

having very substantial foundation. Secretary Fish thus speaks of these claims to General Schenk in his letter of April 23, 1872 "neither the Government of the United States, nor, so far as I can judge, any considerable number of the American people have ever attached much importance to the so called 'indirect claims' or have ever expected or desired any award of damages on their account." He adds: "The United States are sincere in desiring a tabula rasa on this Alabama question and therefore they desire a judgment upon them by the Geneva tribunal" *Geneva Arbitration* Vol. 2: 476.

The principle established by the Geneva

tribunal, that there is no liability for such remote damages will be of value to us as a neutral nation in future wars; but we cannot claim the benefit of it, if by our example in dealing with our own citizens, ~~we~~^{it} we recognize and pay such claims. When the claims for war-premiums were rejected at Geneva it would seem as if all ground upon their part to share in the award had disappeared." He adds, "as to claims of insurance companies, When Mr. Davis our agent at Geneva presented to the tribunal the list of American claims with the insurance claims included he said: "It thus appears that these computations show the

entire extent of all private losses, ^{for} which ~~which~~ the results of the adjudication of this tribunal ought to enable the United States to make compensation. Again Caleb Cushing, one of the American Counsel at Geneva, in a letter dated October 17, 1872, found at page 19, of the American Law Review for October 1873, says: -- "The tribunal in the first place, adjudged Great Britain to be guilty in respect of all captures made by the Alabama, Florida, and their tenders, and by the Shenandoah after her departure from Melbourne."

The tribunal in the second place examined and scrutinized the schedules and estimates of individual losses

presented by the United States.... and awarded a sum in gross --- sufficient to afford a just indemnity to the injured citizens of the United States. This fund.... will be received and held by the United States ~~as~~ a trust-fund to be distributed among the parties interested conformably to the tenor and spirit of the award of the tribunal; and the Government will be bound to make such distribution promptly and justly, by the moral force of its duty of good faith to England, and its obligation to fulfill the stipulation of the treaty of Washington.

"There is no contingency, uncertainty, or doubt in all this; you and the other parties in

interest may, I do not hesitate to say, rest assured of the honor and good faith of the government of the United States in this respect, with just as much of certainty as in the payment of the gold bonds of the Government."

There is another fact which shows that this is a trust-fund - the manner in which the money was handled after its reception by this Government. Is it the habit of the government to take its own money put it into its own treasury, hold it as its own gold and then issue a bond for it promising to pay somebody? Does the Government put \$14,800,000 into the treasury on one hand and add the same amount to the funded debt of the

Government upon the other, unless that money is borrowed or received as a trust."

At the second session of this Congress numerous bills were introduced into each House in reference to the distribution of the award. Also petitions from insurance companies praying for the repeal of the clause which prevents them from sharing in the money. None of these bills were acted upon. At the first session of the forty-fourth Congress, more bills and petitions were presented. The Senate took no action upon them. The House, however, passed a bill which provided for the payment of claims on account of damage inflicted by the so-called "exculpated cruisers," and for

was premiums. The Senate did not act upon this bill.

Bills continued to be introduced, and petitions from insurance companies and others to be presented, from time to time and again in the forty-fifth Congress the judiciary Committee of the House reported a bill which provided for ~~the claims of~~ insurance companies who claimed any of the money of the Geneva Award under control of the United States to sue for the same in the Court of Claims.² The minority of the committee reported a substitute which was adopted. This substitute provided for a court of three judges to sit in Washington D.C. It provided for the payment of claims on account of both inculpat~~ed~~ and exculpated cruisers, 1 Cong. Rec. Vol. 4 Pt. 4 p. 3657. Cong. Rec. Vol. 8 Pt. 1 pp. 102-10.

and for war premiums and also for additional interest on judgments already rendered. The Senate, ^{judiciary} Committee made some amendments to the bill but ~~&~~ nothing further was done².

In the forty-sixth Congress the contest over the balance of the Geneva award fund was transferred from the House to the Senate; several different bills being introduced. Several bills and petitions were also presented in the House but nothing came of them. In the Senate Mr. Thurman reporting a bill from the judiciary committee precipitated the debate and the whole field of argument was gone over again.

The first session of the forty-seventh Congress

¹ Ibid 1561. ² Sen. Jour. 316, 299. 3d Sess. 45th Cong.

finally passed a bill for the distribution of the balance of the award. This bill revived the court of commissioners of Alabama Claims which was to exist two years, with three judges. Judgments were to be entered for two classes of claimants. First, claims directly resulting from damage done by both "inculpatated" and "exculpated" cruisers. Second, claims for war premiums ^{paid} after the sailing of any Confederate cruiser. The judgments of the first class were to be paid before those of the second. If the money was insufficient to pay the judgments the claims were to be paid pro rata. If any money remained after judgments were paid it was to be covered into the Treasury.

This act was approved June 5, 1882. 'U.S. Stat. at Large 22:98-9.

Amendments to this bill were proposed in both House and Senate. They had in view in general two objects, — to give the decision of matters involved to the Court of Claims, and to allow insurance companies to participate in the award.

Thus it is seen that two new classes of claims were allowed by this bill, and the claims of the insurance companies again denied, making three times ^{that} they had been rejected by the Senate and five times by the House.

A Bill to extend the ~~time~~ existence of the Court to December 31, 1885 — was passed by the next Congress.¹ And June 2, 1886 an act was approved for winding up the business of the Court.²

Before taking up the provisions of this bill we

¹ U.S. Stat. at Large 23:33. ² Ibid 24:77

shall notice briefly the work of the court.

II.

On June 24, 1874 the President nominated for judges of the 'Court of Commissioners of Alabama Claims'; Hezekiah S. Wells of Michigan, presiding judge; Martin Ryerson of New Jersey; Kenneth Rayner of Mississippi; William A. Porter of Pennsylvania, and Caleb Baldwin of Iowa as associates. John Davis of Massachusetts was nominated clerk of the court. Judge Ryerson afterwards resigned and Harvey Jewell of Massachusetts was appointed ^{Feb. 26, 1876} to fill the vacancy. In December 1876 Judge Baldwin died. This vacancy was not filled. John A. J. Cresswell was appointed to represent the interests of the United States before the court subject to the supervision of the Attorney General.

On the 22d day of July, 1874, the judges met and organized the court at Washington and all its sessions were held in that city. After making some necessary rules and regulations, they adjourned to enable claimants to prepare their cases. It being found impossible to dispose of the large number of cases before the court, ^{prior to} before the July 22, 1875, the time when the court would have expired by law, the President by proclamation extended its duration for six months and by an act, approved December 24, 1875, the court was extended to July 22, 1876.

On March 6, 1876 an act was approved which allowed additional claims to be filed for three months after its approval.

Under this provision of law many other claims

were filed, and as these could not be disposed of by the time the court was to expire, another act was passed which extended its duration to the first of January 1877.

After having examined and decided all claims submitted the court adjourned on Dec. 29, 1876.

Altogether this court passed upon 2,068 cases in which the amount claimed was about fourteen and one half million of dollars not including interest and it awarded \$ 9,316,120.25 including interest.

Nearly all the claims filed in the court were for the loss of property actually destroyed by one of the cruisers named in the act, or of mariners for the loss of wages and personal effects.

Six claims of insurers were allowed; the aggregate of their judgments being \$111,053.23, not including interest. These claimants alleged and proved that they had suffered losses by the acts of the "inculpatated" cruisers, and that these losses in business growing out of war risks were greater than their gains. Several claims for war premiums which were filed were not allowed by this Court.

An interesting claim was one made by George M. Robeson, Secretary of the Navy, for the destruction of the Hatteras, a war vessel, sunk by the Alabama, and for the loss of the Green-

land, a vessel chartered by the Navy Department as a transport which was sunk by the Florida, and for which the Government paid her owners \$23,500.

This claim was dismissed and the court in its opinion used the following language: "It is well known that all claims for compensation for the loss of public property of the United States were either abandoned voluntarily by the counsel of the United States before the arbitrators at Geneva, or were absolutely rejected by the tribunal itself, and the only damages awarded were for the value of private vessels and property destroyed. The fund out of which our judgments

are paid represents the estimated value of private property alone, and does not include anything based upon the value of public property destroyed.

The reclamation made upon Great Britain was made by our Government in its capacity of sovereign and not as a mere representative of private interests, and the indemnity received has been paid to the United States as a government. The fund--- is entirely under the control of Congress. It might have refused to pass any act for the indemnification of citizens; it might have retained the whole fund. No judgment of this court can change

the character of this fund---so as to make it in any higher sense the property of the Government than it now is.--- the Navy Department is a part of the government itself and any award we should make to it would be to the Government.--- We are satisfied that Congress did not intend to give us the power to adjudicate upon the rights of the Government in regard to this fund.

June 5, 1882 the act for reestablishing the court of commissioners of Alabama claims was approved. The judges appointed were Hezekiah G. Wells, presiding judge, James Harlan of Iowa; and ~~Samuel~~ Samuel of
 'Sen. Ex. Doc. No. 21 pp. 9 et seq. 2 Sess. 44th Cong.

Massachusetts, associates. D. W. Fessenden of Maine was appointed clerk and pro. A. J. Cresswell, Counsel for the United States. The place of Judge Wells becoming vacant, Judge Harlan was appointed presiding judge and Andrew S. Draper an associate.

The Court convened on July 13, 1882 ~~and~~ at the Department of State, and at once made public announcement of its organization, and of the provision of law which required all claims to be filed by January 14, 1883.

Claims to the number of 5,751 were filed, amounting in the aggregate to \$28,061,996.90!

The total amount paid out for judgments rendered by this court, was \$9,389,211.49. The court expired by law on December 31, 1885, and June 2, 1886 the act was approved which provided for the final ^{closing} winding up of the business, and the payment of the balance of the judgments then unpaid. The act extended the powers of the clst for six months from December 31, 1885 - to close up the business of his office and authorized him to employ assistants. The disbursements were to be under the direction of the Secretary of State, who was directed to sell the furniture and other property of the Court and turn the proceeds into the Treasury. The expenses of closing were not to exceed \$500 and

~~were~~ ^{was} to be taken from the fund. The amount to be distributed in judgments then existing, and salaries and expenses contemplated was to be ascertained as follows:
 To the sum of \$9,703,904.89 the amount shown by the letter ^{April 22, 1884} of the Secretary of Treasury to the chairman of the judiciary committee of the House and the Treasury report of June 30, 1877, shall be added the premium realized from the sale of certain bonds in which the said sum was invested, viz. \$83,100.07 making \$10,089,004.96, and to this shall be added the estimated value of the furniture and property; from this the cost of expenses is to be subtracted, the amount of judgments of first class already paid

the balance is to be distributed to the payment of judgments of first class yet unpaid, and the remainder ~~to~~ pro rata to judgments of second class!

So the long-agitated and vexed question of the distribution of the Geneva Award was finally settled.

Insurance companies were excluded to the last, but claims for enhanced premiums, and claims for damage by "exculpated" cruisers were, ^{finally,} allowed.

III,

The manner in which the Government managed this fund will now be noticed briefly.

The Government of Great Britain entered into
into an arrangement with the banking firms of Marten, Bliss & Co., Buxel
Morgan and Co., Jay Cook and Co. for the
payment of this money to the United States.
Accordingly, these firms, at various times,
from July 3, 1873 to September 6, 1873, deposited
in the Treasury at Washington and in
the sub-treasury at New York, gold coin to
the amount of \$15,500,000 for which was
issued to them certificates of deposit,
sixty-eight in all, which were endorsed
by these firms to the joint order of Sir
Edward Thornton, the British minister, and

E. M. Archibald, British acting Consul-
 general at New York. These sixty-eight
 certificates were afterwards exchanged for
 one certificate of deposit for \$15,500,000 and
 this was indorsed September 9, 1873 by the
 British minister and the acting Consul-
 general to the order of Hamilton Fish, Sec-
 retary of State, who gave a receipt therefor
 stating that the award had been duly paid.
 Mr. Fish on the same day turned over
 this certificate of deposit to W. A. Rich-
 ardsen Secretary of the Treasury, who immedi-
 ately invested the amount in five per
 cent registered bonds of the funded loan,
 making out one bond for \$15,500,000 payable
 to the Hon. Hamilton Fish, Secretary of State

in trust to be held subject to the future disposition of Congress.

After the award had been invested in bonds, the accrued interest therefrom, which was payable quarterly, was invested from time to time in bonds of the same character, so that in the end a sum of interest equal to \$2,438,731.09 had been so invested. This sum was used to purchase bonds to the amount of \$2,403,800, the difference \$34,931.09 being absorbed in paying premium on the same. Besides this there was a further sum of interest of \$123,305.89 which was not invested in bonds. The bonds of this fund were sold as occasion

demanded to pay the judgments rendered
 by the court of Commissioners of Alabama
 claims to the extent of \$8,350,000. up to Jan-
 uary 22, 1877. These bonds were sold at a
 premium in coin which netted to the Govern-
 ment the sum of \$383,700.07 in currency and
 which was covered into the Treasury as a
 miscellaneous receipt. The bonds were sold
 for gold and the sale of an amount of gold
 equal to the face value of the bonds, produced
 a premium in currency of \$992,552.19, making
 the total amount received on the coin face
 of the bonds sold the sum of \$9,342,552.19.
 There was paid out in judgments up to and in-
 cluding the fiscal year 1877, \$9,315,753.19, leaving
 an unexpended balance of \$26,799. This

amount together with the balance of the principal - \$7,150,000 and ^{the} accumulated interest of \$2,403,800 and \$123,305.89, left in the treasury available for future disposition \$9,703,904.89. less expenditures of ^{the} court. ~~for which see table.~~

After the re-establishment of the Court in 1882 there was paid out for judgments to and including the fiscal year 1889 the sum of 9,339,211.49.²

In a statement furnished by the Assistant Secretary of the treasury Sept. 12, 1898 we have the following figures:

Amount paid by Great Britain		\$ 15,500 00 0.00
Premium and interest		<u>3,9053-58.18</u>
Total		<u>19,405,538.18</u>
Paid judgments, class one	12,666,700.70	
" " " two	5,739,495.41	
Expenses, Tribunal of Arbitration	149,168.41	
" of Court	150,193 63	
Total		<u>19,405,538.15</u>

2. Treasurers reports years 1883-'90

1. Sen. Rept. No. 567 p. 6. 1st sess 49th Cong. and Cong. Rec. Vol. 17 Pt. 5 p. 4763.

A discrepancy appears between the figures furnished above, and ~~the~~ statements of ~~the~~ Acting-Secretary Fairchild dated March 23, and 31, 1886, to Senator George F. Edmunds found at p. 4763 Cong. Rec. Vol. 17, Pt 5. The discrepancy is \$800 in the total net receipts, there being that sum greater in the statement furnished September 12, 1898, than in the previous statements.